

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 567 Small Business Road Construction Mitigation Grant Program
SPONSOR(S): Transportation & Infrastructure Subcommittee; Duran, Richardson and others
TIED BILLS: IDEN./SIM. **BILLS:** SB 182

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Transportation & Infrastructure Subcommittee	12 Y, 0 N, As CS	Johnson	Vickers
2) Transportation & Tourism Appropriations Subcommittee			
3) Government Accountability Committee			

SUMMARY ANALYSIS

Currently, the only mechanism to compensate a small business for the financial impact of a road construction project is through a civil action in state court. However, businesses cannot claim damages against DOT due to construction activities unless there is negligence or misconduct.

The bill creates a Small Business Road Construction Mitigation Grant Program (Program), providing compensation of up to \$15,000 for qualified businesses for lost revenue associated with a Department of Transportation (DOT) road construction project lasting 90 days or longer. For-profit businesses with 40 or fewer employees located in a construction mitigation zone are eligible to participate in the Program. The bill also provides DOT with criteria to evaluate applications under the Program, including the decline in revenue, proximity and duration of construction, and severity of traffic disruption.

The bill requires DOT to prepare a report detailing best practices and methods to reduce the negative impact of construction projects on small businesses, and requires DOT to initiate rulemaking to implement the Program.

The bill has an indeterminate negative fiscal impact on DOT; however, the Program is subject to Legislative appropriation. There is also an indeterminate negative fiscal impact to the Department of Economic Opportunity associated with assisting applicants in preparing the required documentation.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

The only mechanism to compensate a small business for the financial impact of a Department of Transportation (DOT) construction project is by the business bringing a civil action against DOT in state court.¹ DOT currently has a business damages process, however, the process only applies to a taking of property in a construction zone in an eminent domain proceeding. Businesses cannot claim damages against DOT for damages due to construction activities when the construction is performed without negligence or misconduct.²

According to DOT, its public involvement process is extensive and integral to project evaluation and development, and is usually scaled to the project's magnitude. The public involvement process helps shape DOT's projects and the determination of any necessary mitigation actions.³

Additionally, during a construction project, DOT works with business and property owners to minimize disruption. This includes project updates, addressing specific concerns, notifying business and property owners of certain activities, and working during nighttime hours. DOT also works to provide business access at all times by using pedestrian barricades and installing signage at business entrances.⁴

Proposed Changes

The bill provides legislative findings that it is in the state's best interest to support small businesses that are negatively impacted by state road construction projects and to mitigate the negative impacts on such businesses. While the benefit of road construction and development ultimately helps small business growth, in the short term, small businesses may experience decreased revenue that may decrease economic activity, state revenue, and employment.

The bill requires DOT, subject to Legislative appropriation, to create the Small Business Roadway Construction Mitigation Program (Program) to provide support for small businesses impacted by state road construction projects.

The bill defines "construction mitigation zone" as a geographic area with a high concentration of qualified businesses which is designated by DOT as being impacted by a DOT construction project.

The bill defines "qualified business" as an entity that:

- Is engaged in a for-profit business enterprise;
- Employs up to 40 full-time or part-time employees; and
- Is located in a designated construction mitigation zone.

The bill requires DOT is to disburse grants to qualified businesses for the purpose of maintaining the businesses during the road construction project.

The grant to each qualified business may not exceed the lessor of the decline in revenue demonstrated by the business or \$15,000 per calendar year.

¹ Department of Transportation SB 182 (2018) Bill Analysis. p.2. Copy of file with Transportation & Infrastructure Subcommittee.

² E-mail from Department of Transportation, November 29, 2017. Copy on file with Transportation & Infrastructure Subcommittee.

³ Department of Transportation SB 182 (2018) Bill Analysis. p.2.

⁴ E-mail from the Department of Transportation, November 29, 2017. Copy on file with Transportation & Infrastructure Subcommittee.

A qualified business may apply for a grant only for a construction project lasting 90 days or more. To be eligible for a grant, the qualified business must demonstrate in its application a significant decline in revenue, including timelines connecting the project to the loss of revenue, in a format and manner prescribed by DOT. The Department of Economic Opportunity (DEO) must, upon request and at no cost to the applicant, assist an applicant in preparing documentation to demonstrate such decline.

DOT must prioritize the award of each construction mitigation grant on a case-by-case basis using all of the following criteria:

- Rate of decline in revenue or profits;
- Duration of construction;
- Proximity to construction;
- Severity of traffic disruption;
- Lack of access to parking;
- Lack of access to pedestrian traffic; and
- Any other criteria DOT determines to be relevant.

The bill provides that any grant received must offset any damages in a civil action against DOT relating to the road construction project.

The bill requires DOT, on or before January 31, 2019, to submit a report to the President of the Senate and the Speaker of the House of Representatives detailing best practices and methods to reduce the negative impacts road construction projects.

By August 31, 2018, DOT must initiate rulemaking to implement the Program.

B. SECTION DIRECTORY:

Section 1 creates s. 339.28154, F.S., creating the Small Business Roadway Construction Mitigation Grant Program.

Section 2 provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

There is an indeterminate negative fiscal impact to DOT for the administration of the Program; however, the Program is subject to Legislative appropriation. If the Legislature does not specifically appropriate funds for the implementation of the Program, DOT is not required to fund the Program through funding appropriated for Department's work program. The fiscal impact will be a function of how many businesses request assistance and the amount of assistance that is awarded.

DEO may incur an indeterminate negative fiscal impact associated with assisting qualified businesses in preparing documents demonstrating a decline in revenue.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Subject to Legislative appropriation, qualified businesses may see a positive fiscal impact of up to \$15,000 each associated with participation in the Program. The number of qualified businesses is unknown.

D. FISCAL COMMENTS:

According to DOT, it is not clear whether or not grants issued under the Program would be federally reimbursable by the Federal Highway Administration.⁵

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DOT to initiate rulemaking to implement the Program by August 31, 2018.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On December 6, 2017, the Transportation & Infrastructure Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The strike-all amendment:

- Limited the scope of the bill to lost revenues instead of lost revenues or profits.
- Clarified the language making the Program subject to appropriations instead of allocations.
- Added a provision to prevent double-recovery of lost revenues in a civil action involving DOT.
- Made other technical and conforming changes to the bill.

This analysis is drafted to the committee substitute as reported favorably by the Transportation & Infrastructure Subcommittee.

⁵ *Id.* p.5.